



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/780,507 01/08/97 ELLUL M 9427C

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IM22/0829

EXAMINER

ZITOMER, F

ART UNIT

PAPER NUMBER

1713

2

DATE MAILED:

08/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/780,507

Applicant(s)
Ellul et al.

Examiner
Fred Zitomer

Group Art Unit
1713



☐ Responsive to communication(s) filed on _____.

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-10 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1713

1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Masuda et al., US 5,525,675.

Masuda teaches thermoplastic elastomer compositions and articles thereof comprising the claimed amounts of propylene homopolymer and partially crosslinked ethylene-propylene-nonconjugated diene rubber [Abstract]. Propylene polymers having a syndiotactic pentad of at least 0.7, notably at least 0.85, and specifically of 0.91 *inter alia* are disclosed, exemplified and claimed [column 3, lines 26-35; column 7, lines 22-24; claims 1 and 2]. The disclosures of Masuda are commensurate with the instant invention.

The rejection is based on an effective filing date for the present application of January 8, 1997 because the limitations relating to the syndiotactic pentad of the instant propylene homopolymers are neither disclosed nor suggested in the parent applications. In this regard, and in view of applicant's Request For Interference, it is deemed pertinent that:

- the statement prior to the examples at page 2, lines 1-2 of Application, 08/619,135

"The present invention will be better understood by reference to the following examples which

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serve to illustrate but not limit the invention." is conspicuously absent any reference to syndiotactic pentad. Emphasis added. The examples clearly are not intended to limit the tacticity of the propylene homopolymer.

- the Masuda patent was allowed subsequent to the declaration of Paper No. 11 wherein the criticality of polymers having the instant syndiotactic pentads was shown.

- the claims in applicant's parent applications encompass polymers not shown to have the tacticity and/or properties set forth in the Masuda declaration.


- nothing on this record shows that applicant recognized the value of polymers having the instant syndiotactic pentad prior to the issuance of the Masuda patent. Accordingly, the present claims are clearly anticipated by Masuda and no ground for interference has been shown.

2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Zitomer whose telephone number is (703) 308-2461. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2351.


FRED ZITOMER
PRIMARY EXAMINER
GROUP 1710

Zitomer/fz
August 22, 2000